IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

OP.No. 7758 of 1998(W)

PETITIONER:

M/S. BHARATH HOTEL, D.H.ROAD,
ERNAKULAM, KOCHI – 682 016,
A PARTNERSHIP FIRM, REP.BY ITS
MANAGING PARTNER, SRI.G.GOPINATHAN.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN
SRI.P.SANTHALINGAM, SC, KSEB

RESPONDENTS:

1. **THE KERALA STATE ELECTRICITY BOARD, VYDHYUTHI BHAVAN, PATTOM PALACE, THIRUVANANTHAPURAM – 4, REP.BY ITS SECRETARY.**

2. **THE EXECUTIVE ENGINER (COMMERCIAL) KERALA STATE ELECTRICITY BOARD, VYDHYUTHI BHAVAN, PATTOM PALACE, THIRUVANANTHAPURAM – 4.**

3. **THE SPECIAL OFFICER (REVENUE), KERALA STATE ELECTRICITY BOARD, VYDHYUTHI BHAVAN, PATTOM PALACE, THIRUVANANTHAPURAM – 4.**

*** ADDL.R4 IS IMPLEADED**

4. **STATE OF KERALA REP.BY ITS SECRETARY, POWER DEPARTMET, THIRUVANANTHAPURAM.**

*** ADDL.R4 IS IMPLEADED AS PER ORDER DT.10.4.2007 IN CMP. NO.20445/1999**

BY ADV. SRI.R.K.VENU NAYAR, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB
BY GOVERNMENT PLEADER SMT.M.K.PUSHPALATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.13450/1998 IN OP. NO.7758/1998

DISMISSED

10.04.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ELECTRICITY BILL DT.13.3.1998 RECEIVED BY THE PETITIONER.

EXT.P2:- COPY OF THE FAX MESSAGE SENT BY THE PETITIONER TO THE 2ND RESPONDENT ON 19.3.98.

EXT.P3:- COPY OF THE LETTER DT.21.3.98 SENT BY PETITIONER TO THE 2ND RESPONDENT CONFIRMING THE FAX MESSAGE SENT ON 19.3.98.

EXT.P4:- COPY OF THE BILL DT.13.4.98 ISSUED BY 3RD RESPONDENT TO THE PETITIONER.

EXT.P5:- COPY OF THE ORDER DT.31.1.98 REGARDING TERMS AND CONDITIONS OF THE EREB POWER.

EXT.P6:- COPY OF THE GOVERNMENT ORDER NO.G.O.(MS) NO.3/98/FD DT.23.1.1998.

EXT.P7:- COPY OF THE ORDER NO.BO.2785/97 (PLG.COM.2920/96) DT.12.12.1997 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

tss

K.BALAKRISHNAN NAIR, J.

O.P. NO. 7758 OF 1998-W

JUDGMENT

The petitioner is a High Tension consumer under the respondents. This Original Petition was filed by it, challenging Exts.P1 and P4 bills for the months of February & March, 1998 respectively. Incidentally, it also challenges the some provisions in Ext.P5 Board order, which has been pressed into service against it.

2. The brief facts of the case are the following: The Kerala State Electricity Board introduced 30% power-cut in the State with effect from 1.9.1997. The monthly quota for the petitioner was fixed as 58302 units. At the relevant time, the K.S.E.B was importing Eastern Regional Electricity Board (EREB) power, which was billed at the rate of Rs.3.20 per unit. Ext.P5 Board order provided that all consumers who do not require EREB power should inform the Board about the same before 5 p.m on 31.1.1998. In the case of such consumers, their energy bills up to 70% of the monthly-base average consumption will be billed at the ruling tariff and only the excess consumption, if any, will be billed at EREB rate. If no intimation is given as provided in Ext.P5 by the consumer, it will be treated that he wants

to consume EREB power. In such cases, irrespective of his consumption, the first 30% of the average monthly-base consumption will be billed at the EREB rate and the balance at the ruling tariff. The petitioner submits, it was not aware of the said stipulation in Ext.P5 Board order. No proper publicity was also given to the said stipulation. Therefore, it failed to exercise the option in time. During the month of February, 1998, the petitioner's consumption exceeded the limit of 70% of the average monthly consumption. For the said month, it was billed at EREB rate for the first 30% of the consumption. Even though, during the month of March, 1998 the petitioner's consumption was within the sanctioned limit, the first 30% of the consumption was billed at ERE**B** rate. So, the petitioner attacks Exts.P1 and P4 bills and also Ext.P5 Board order, relying on which, Exts.P1 and P4 were issued. During the pendency of the O.P the petitioner has amended the writ petition, incorporating the challenge against the relevant Government orders and Board orders, which support the levy under Exts.P1 and P4.

3. The respondents support the impugned bills. They have adopted the contentions taken in the counter affidavit filed by them in O.P.No.8985/98.

4. Heard the learned counsel on both sides. The petitioner has been

visited with adverse consequences for not opting in time in terms of Ext.P5 Board order. The paper publication relied on by the K.S.E.B cannot be treated as a notice to the petitioner, when the consequences that fall upon it are very grave. If Ext.P5 is a statutory instrument and it is published in the gazette, then it may be contended that there was constructive notice. But, the respondents do not have any such case. Therefore, I feel that the levy of electricity charges at EREB rate for the first 30% of the quota allotted to the petitioner, is unjustified. Though this point is not specifically considered, this Court has granted relief to the petitioner placed in similar circumstances in O.P.No.9174/1998 and the appellant in W.A.No.808/1998. In view of the above position, Exts.P1 and P4 are quashed. The 3rd respondent is directed to issue a fresh bill, levying energy charges at the ruling tariff up to 70% of the consumption and at EREB rate for the excess consumption beyond 70%.

The Original Petition is disposed of as above.

10th April, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/

K.BALAKRISHNAN NAIR,J.

O.P. NO.7758/1998-W

JUDGMENT

10.4.2007